

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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9100.00-00

Person To Contact:
, ID No.

Telephone Number:

In Re: Ruling Request

Refer Reply To:
CC:PSI:B04
PLR-132199-13
Date:
January 08, 2014

Legend:

Taxpayer 1 =
Taxpayer 2 =
Trust =
Date 1 =
Date 2 =

Dear :

This letter responds to the submission dated July 12, 2013, and subsequent correspondence, requesting an extension of time pursuant to ' 2642(g) of the Internal Revenue Code and ' 301.9100-3 of the Procedure and Administration Regulations to elect under ' 2632(c)(5) not to have the deemed allocation rule of ' 2632(c)(1) apply to transfers to a trust.

The facts submitted and the representations made are as follows. On Date 1, Taxpayer 1 and Taxpayer 2 created Trust, an irrevocable trust. Trust has generation-skipping transfer (GST) tax potential. On Date 2, each taxpayer made a gift of cash to Trust.

Taxpayer 1 and Taxpayer 2 retained a tax professional to prepare their Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Return, to report the transfers and elect under ' 2632(c)(5) not to have the deemed allocation rule of ' 2632(c)(1) apply to the transfers. The tax professional failed to prepare the Forms 709.

Taxpayer 1 and Taxpayer 2 are requesting an extension of time under ' 2642(g) and ' 301.9100-3 to file Forms 709 and to elect under ' 2632(c)(5) not to have the deemed allocation rule of ' 2632(c)(1) apply to the transfers to Trust.

Law and Analysis:

Section 2601 imposes a tax on every GST. A GST is defined under ' 2611(a) as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2602 provides that the amount of the tax imposed by ' 2601 is the taxable amount multiplied by the applicable rate. Section 2641(a) defines the applicable rate as the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer. Under ' 2642(g), the inclusion ratio with respect to any property transferred in a GST is the excess (if any) of 1 over the applicable fraction. The applicable fraction, as defined in ' 2642(g), is a fraction, the numerator of which is the amount of the GST exemption under ' 2631 allocated to the trust, and the denominator of which is the value of the property transferred to the trust.

Section 2631(a) provides that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption amount which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that any allocation under ' 2631(a), once made, shall be irrevocable.

Section 2632(c)(1) provides that if any individual makes an indirect skip during such individual's lifetime, any unused portion of such individual's GST exemption shall be allocated to the property transferred to the extent necessary to make the inclusion ratio for such property zero. If the amount of the indirect skip exceeds such unused portion, the entire unused portion shall be allocated to the transferred property.

Section 2632(c)(5)(A) provides that an individual (i) may elect to have this subsection not apply to (I) an indirect skip, or (II) any or all transfers made by such individual to a particular trust, and (ii) may elect to treat any trust as a GST trust for purposes of this subsection with respect to any or all transfers made by such individual to such trust.

Section 2632(c)(5)(B) provides, in part, that an election under subparagraph (A)(i)(I) shall be deemed to be timely if filed on a timely filed Form 709 for the calendar year in which the transfer was made or on such later date or dates as may be prescribed by the Secretary. An election under clause (i)(II) or (ii) of subparagraph (A) may be made on a timely filed Form 709 for the calendar year for which the election is to become effective.

Section 26.2632-1(b)(2)(i) of the Generation-Skipping Transfer Tax Regulations provides, in part, that an indirect skip is a transfer of property to a GST trust as defined in ' 2632(c)(3)(B) provided that the transfer is subject to gift tax and does not qualify as

a direct skip. In the case of an indirect skip made after December 31, 2000, the transferor's unused GST exemption is automatically allocated to the property transferred (but not in excess of the fair market value of the property on the date of the transfer). The automatic allocation pursuant to this paragraph is effective whether or not a Form 709 is filed reporting the transfer, and is effective as of the date of the transfer to which it relates. An automatic allocation is irrevocable after the due date of the Form 709 for the calendar year in which the transfer is made. The automatic allocation of exemption applies even if an allocation of exemption is made to the indirect skip in accordance with ' 2632(a).

Section 26.2632-1(b)(2)(ii) provides, in part, that the transferor may prevent the automatic allocation of GST exemption with regard to an indirect skip by making an election, as provided in paragraph (b)(2)(iii) of this section.

Section 26.2632-1(b)(2)(iii)(A) provides, in part, that a transferor may prevent the automatic allocation of GST exemption (elect out) with respect to any transfer or transfers constituting an indirect skip made to a trust or to one or more separate shares that are treated as separate trusts under ' 26.2654-1(a)(1) (collectively referred to hereinafter as a trust). In the case of a transfer treated under ' 2513 as made one-half by the transferor and one-half by the transferor's spouse, each spouse shall be treated as a separate transferor who must satisfy separately the requirements of paragraph (b)(2)(iii)(B) to elect out with respect to the transfer. A transferor may elect out with respect to--(1) one or more prior-year transfers subject to ' 2642(f) (regarding ETIPs) made by the transferor to a specified trust or trusts; (2) one or more (or all) current-year transfers made by the transferor to a specified trust or trusts; (3) one or more (or all) future transfers made by the transferor to a specified trust or trusts; (4) all future transfers made by the transferor to all trusts (whether or not in existence at the time of the election out); or (5) any combination of paragraphs (b)(2)(iii)(A)(1) through (4) of this section.

Section 26.2632-1(b)(2)(iii)(B) provides, in part, that to elect out, the transferor must attach a statement (election out statement) to a Form 709 filed within the time period provided in paragraph (b)(2)(iii)(C) of this section (whether or not any transfer was made in the calendar year for which the Form 709 was filed, and whether or not a Form 709 otherwise would be required to be filed for that year). The election out statement must identify the trust, and specifically must provide that the transferor is electing out of the automatic allocation of GST exemption with respect to the described transfer or transfers. Further, unless the election out is made for all transfers made to the trust in the current year and/or in all future years, the current-year transfers and/or future transfers to which the election out is to apply must be specifically described or otherwise identified in the election out statement.

Section 26.2632-1(b)(2)(iii)(C) provides, in part, that to elect out, the Form 709 with the attached election out statement must be filed on or before the due date for

timely filing (within the meaning of paragraph (b)(1)(ii) of this section) of the Form 709 for the calendar year in which the first transfer to be covered by the election out was made.

Section 2642(g)(1)(A) provides, generally, that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an election described under ' 2632(c)(5).

Section 2642(g)(1)(B) provides that in determining whether to grant relief under ' 2642(g)(1), the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute.

Notice 2001-50, 2001-2 C.B. 189, provides that under ' 2642(g)(1)(B), the time for allocating the GST exemption to lifetime transfers and transfers at death, the time for electing out of the automatic allocation rules, and the time for electing to treat any trust as a GST trust are to be treated as if not expressly prescribed by statute. The Notice further provides that taxpayers may seek an extension of time to make an election described in § 2632(b)(3) or (c)(5) under the provisions of ' 301.9100-3.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election. Section 301.9100-1(a).

Section 301.9100-2 provides an automatic extension of time for making certain elections. Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose date is prescribed by a regulation (and not expressly provided by statute). In accordance with ' 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an election described in § 2632(b)(3) or (c)(5) under the provisions of ' 301.9100-3.

Section 301.9100-3(a) provides, in part, that requests for relief subject to ' 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Section 301.9100-3(b)(1) provides, in part, except as provided in ' 301.9100-3(b)(3)(i) through (ii), that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts submitted and the representations made, we conclude that the requirements of ' 301.9100-3 have been satisfied. Accordingly, Taxpayer 1 and Taxpayer 2 are granted an extension of time of 120 days from the date of this letter to make an election under ' 2632(c)(5) that the deemed allocation rules of ' 2632(c)(1) do not apply to the transfers in this case. This election will be effective as of the date of the transfers. The election should be made on Forms 709, and filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to the Forms 709.

In accordance with the Power of Attorney on file with this office, we have sent a copy of this letter to your authorized representatives.

Except as expressly provided herein, we neither express nor imply any opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Further, we express no opinions regarding the when the gifts were complete under State law.

The rulings contained in this letter are based upon information and representations submitted by the taxpayers and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This ruling is directed only to the taxpayers requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

Leslie H. Finlow

Leslie H. Finlow
Senior Technician Reviewer, Branch 4
(Passthroughs & Special Industries)

Enclosures: Copy for ' 6110 purposes